1942.

File No. B. Munis. Dist. Local Bds. & Boroughs/42

Legal **DEPARTMENT**

B. **BRANCH**

K

Subject.

P-17/2

Governor's Bill No. XXIII of 1942.

A Bill to amend the Bombay District Municipal Act, 1901 and the Bombay Local Boards Act, 1923, and the Bombay Municipal Boroughs Act 1925.

(Insertion of new S. 25 A in Bom. 3 of 1901, S. 24A in Bom. VI of 1923 and amendt. of S. 32 of Bom. XVIII of 1925.)

Bom. XIX of 1942.

File No. B. Munis. Dist Local Bds & Boroughs/42

Bld. Scott. Slip. 21 A

52.1.B

C O N T E N T S

Legal Department File No. D Dunlo Distt Local Bod'a and Borough /42

Sr. No.	Compilation No.	Subject	Pages
		A Bill to amend D. Distt Munpl Act 1901 D Local Bods Act 1923 and D Munpl. Borough Act, 1925	
1.	U.O. to G.D.No. 8215 Dt. 10-10-42	Draft Bill	1-2
2.	L.D. Letter to CCCO dt. 5-11-42	Bill to amend the D Distt Munpl. A 1901 D Local Bds Act 1923 and D Munpl Boroughs Act 1925	3-4
3.	----	Governor's Bill No XXIII of 1942	5-9
4.	U.O. to G.D. No.8020 dt. 6-11-42	Draft Notfn v/s 80(1) C. of 1 Act, 1935	11-13
5.	N.I. No. 11404 dt. 6-11-42	Authentic copy of the Bill with C.C.'s assent	15
6.	G.O.L.D. No.8107 dt. 6.11.42	Publication of Act No. XIX of 1942	17-23
7.	----	Government's Bill No XXIII of 1923	25-42
8.	.....	Act. No. XIX of 1942	43-50

Dr/20/4

S.M.D 30/4.

YAK 30/4

Office of the R.A.A.

A revised draft Bill is sent herewith.

2. The expression "for any reason unwilling or unable to exercise the powers etc." is replaced by "is for any reason not likely to exercise the powers etc." The change is necessary as otherwise the object of the Act will be frustrated by the president or vice-president as the case may be taking the stand that although he is in detention he is not unwilling or unable to exercise the powers, etc. The change is on the lines of the recent amendment of the City of Bombay Municipal Act

3. The revised draft provides for the emergency exercise of powers by the authorised person for such period as the Collector may from time to time direct. The provisions of the period would enable the Collector to take suitable action whenever a deadlock is created by the authorise person.

4. The G.D. draft fails to provide for the emergency exercise of municipal powers in the following cases:-

(a) When the president takes leave or deputes his powers and duties to the vice-president, the president is no longer required by the law to exerxise the powers and perform the duties but the law has thrown the burden on vice-president. If the vice-president happens to be in detention or proves recalcitrant it should be possible to authorise the president or any other councillor or chief officer to perform the duties of the vice-president. The revised draft achieves this result.

(b) Similarly, the rules or regulations made under the various Acts may confer and impose on the vice-presiden t certain powers and duties. If the vice-president is detained or proves recacitrant it would be necessary to authorise the president or councillor or chief officer to exercise the powers and perform the duties. The revised draft provides for this.

5. The G.D. draft refers specifically to the president's failure to depute his powers to the vice-presiden when necessary. The revised

draft leaves this to be included in the general expression "not likely to exercise and perform any of the powers and duties conferred and imposed on him etc."

6. The revised draft simplifies the constructionof the statutory provision and enables the authorisation of any councillors other than the defaulting president or vice-president, or chief officer, It does not specify the order of authorisation as that would make the draft complicated. The matter whill be left to executive instructions and the Collector may be asked to authroise -(a) the president or vice-president in the first instance in the case of a default by the vice-president or president respectively and (b) on a failure by the authroised president or vice-president to authorise any other councillor or chief officer-

7. G.D. may verify whether the draft carries out its intention and is adequate for administrative purposes.

8. The subject-matter of the Bill falls under entry No.13 in the Provincial Legislative List in the Seventh Schedule to the Government of India Act, 1935. None of the provisions of the Bill relates to any matter enumerated in the Concurrent Legislative List. It is not, therefore, necessary to reserve the Bill for consideration of the Governor General with reference to paragraph(2) of the Proclamation and section 107(2) of the Government of India Act, 1935.

9. The statement at p.27 ante, as slightly amended, is in order.

Sd/- P.N.Moos
10/10

Remembrancer ofLegal Affairs.

U.R. to G.D., No 8251, dated the 10th October 1942.

Mr/28/4

No. 9002
Legal Department,
Bombay Castle, 5th November 1942

From,

P.N. Moos, Esquire, Bar-at-Law, I.C.S.,
Secretary to the Government of Bombay.

To:

The Secretary to the Governor of Bombay

Subject :- A Bill to amend the Bombay District Municipal Act, 1901, the Bombay Local Boards Act, 1923, and the Bombay Municipal Boroughs Act, 1925

Sir,

With reference to your memorandum No.201(76) , dated the 2nd November 1942 addressed to the General Department, on the above subject I am directed to forward herewith for the assent of His Excellency the Governor, a copy of the Bill to amend the Bombay District Municipal Act 1901, the Bombay Local Boards Act,1923 and the Bombay Municipal Boroughs Act, 1923, prepared by His Excellency the Governor under paragraph(2) of the Proclamation dated the 4th November 1939, issued by him under section 93 of the Government of India Act, 1935

2. None of the provisions of the Bill affects any special responsibility of the Governor under section 52(1) of the Government of India Act,1935, or falls within the purview of clause(1),(b),(c) or(d) of paragraph XVII of the Instrument of Instructions to the Governor of Bombay.

3. The subject matter of the Bill falls under entry 13 in the Provincial Legislative List in the Seventh Schedule to the Government of India Act,1935. None of the Provisions of the Bill relates to any matter enumerated in the Concurrent Legislative List. It is, therefore not necessary to reserve the Bill for consideration of the Governor General with reference to paragraph (2) of the Proclamation and section 107(2) of the Government of India Act, 1935

4. The date on which His Excllency the Governor's assent is given may kindly be entered in the endorsement.

5. I also forward herewith one spare copy of the Bill

Your obedient servant,

Sd/- P.N.Moos
5/11

Secretary to the Govt. of Bombay
Legal Department

Through the Secy to the Government of Bombay,

General Department.

Mr/28/4

Legal Department

The Bill to amend the Bombay District Municipal Act, 1901, the Bombay Local Boards Act, 1923 and the Bombay Municipal Borough Act, 1925, has been forwarded separately through the General Depc ment to the Secretary to the Governor for obtaining the assent of His Excellency the Governor to the Bill.

2. A draft notification under section 92(1) of the Government of India Act, 1935, for applying the proposed Act to the Partiall excluded areas in this Province is furnished herewith. If it is decided to apply the Act to the said areas, the notification shou be published in the Bombay Government Gazette on or after the date on which the Act will be published in the Bombay Government Gazette.

3. Attention of the General Department is requested to this Department Circular No.7627, dated the 20th August 1941. Orders of Government on the question of application of the Act to the partially excluded areas in this Province should have been obtai ed and communicated to this Department at the time of forwardin the papers for —

—obtaining assent to the Bill.

Sd/- S.L.C.
6/11

For Secretary to the Government of Bombay,
Legal Department.

U.R. to G.D., No. 0020 dated the 6th November 1942

Lr/23/4

Notification

General Department
Bombay Castle November 1942.

No. :- In exercise of the powers conferred by sub-section (1) of section 52 of the Government of India Act, 1935, the Governor of Bombay in hereby pleased to direct that the Bombay District Municipal, Local Boards and Municipal Boroughs (Amendment) Act, 1942./~~Bom~~ of 1942) shall apply to thepartially excluded areas in the Province of Bombay

* to be filled in by G.D.before issue.

By order of the Governor of Bombay.

Secretary to Government.

Ur/28/4

No. 201(76)
Office of the Governor's Secretary
Government House,
Bombay, 6th November 1942.

From

S. Gamvin, Esquire, I.C.S.
Assistant Secretary to the
Governor of Bombay.

To,

The Secretary to Government
Legal Department.

Subject:- Bombay District Municipal, Local
Boards and Municipal Boroughs
(Amendment) Bill, 1942.

Sir,

With reference to your letter No.9002 dated 5th November 1942, I am directed to return herewith the copy of the Bombay District Municip l, Local Boards and Municipal Boroughs (Amendment) Bill,1942 prepared by His excellency the Governor under paragraph(2) of the Proclamation, dated the 4th November 1939, issued by him under ~~the~~ section 93 of the Government of India Act, 1935, and to state that under the provisions of the aforesaid paragraph His Excellency the Governor is pleased to declare that he assents to the Bill in the of His Majesty.

Your obedient servant,

Sd/-

for Assistant Secretary to the Governor of Bom.

Hr/28/4

Acts.
Publication of the Bombay District Municipal Local Boards and Munpl. Boroughs (Amendment)Act,1942

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No.0027

Bombay Castle, 6th November 1942

Letter to the Secretary t the Governor, No.9002, dated the 5th November 1942

Letter from the Assistant Secretary to the Governor No.201 (76) dated the 6th November 1942.

"With reference to your letter No.9002 dated 5th November 1942 I am directed to return herewith the copy of the Bombay District Municipal, Local Boards and Municipal Boroughs (Amendment) Bill, 1942, prepared by His Excellency the Governor u under paragraph(2) of the Proclamation, dated the 4th November 1939, issued by him under section 93 of the Government of India Act, 1935, and to state that under the provisions of the aforesaid paragraph His Excellency the Governor is pleased to declare that he assents to the Bill in the name of H Majesty."

RESOLUTION.- The law should be published as Bombay Act No. XXX of 1942, in the Bombay Government Gazette dated the 6t November 1942.

2. The act should be translated into Marathi, Gujrati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the General

By order of the Governor of Bombay,

Sd/- S.L.C.
6/11

for (P.H.Mooo
(Secretary to Government.

To

The Manager, Government Central Press ,Bombay (with a copy of the act and with a request that 15 Gazette copies of the Act may be forwarded to the Legal Department).

The General Department.
The Oriental Translator to Government,) With a cop
The Secretary to the Bombay Legislative Council,) of the Act
The Secretary to the Bombay Legislative Assembly)
)

With five extra copies.

S.L.P. 073

Bombay Act No. XIX of 1942

~~GOVERNOR'S BILL No. XXIII OF 1942.~~

A Bill to amend the Bombay District Municipal Act, 1901, the Bombay Local Boards Act, 1923, and the Bombay Municipal Boroughs Act, 1925.

Bom. III of 1901. Bom. VI of 1923. Bom. XVIII of 1925.

WHEREAS it is expedient to amend the Bombay District Municipal Act, 1901, the Bombay Local Boards Act, 1923, and the Bombay Municipal Boroughs Act, 1925, for the purposes hereinafter appearing;

26 Geo. V, c. 2.

AND WHEREAS the Governor of Bombay has assumed to himself under the Proclamation dated the 4th November 1939, issued by him under section 93 of the Government of India Act, 1935, all powers vested by or under the said Act in the Provincial Legislature;

NOW, THEREFORE, in exercise of the said powers the Governor of Bombay is pleased to make the following Act:—

Short title and duration.

1. (*1*) This Act may be called the Bombay District Municipal, Local Boards and Municipal Boroughs (Amendment) Act, 1942.

(*2*) It shall remain in force for six months only:

Provided that the Provincial Government may, by notification in the Official Gazette, direct that it shall remain in force for a further period not exceeding six months at a time, but in no case beyond the 1st day of April 1944.

Insertion of new heading and section 25A in Bom. III of 1901.

Bom. III of 1901

2. After section 25 of the Bombay District Municipal Act, 1901, the following new heading and section shall be inserted, namely:—

"(6) *Special provisions for exercise of powers and performance of duties of president and vice-president in certain contingencies.*

Collector to authorise councillor or chief officer to exercise powers and perform duties of president or vice-president in certain cases.

25A. If at any time it appears to the Collector that a situation has arisen whereby the president or the vice-president as the case may be is for any reason not likely to exercise and perform any of the powers and duties conferred and imposed on him or deputed to him by or under this Act, then notwithstanding anything contained in this Act or in the rules or regulations made thereunder, the Collector may by order in writing authorise any councillor, other than the president or the vice-president as the case may be, or the chief officer to exercise and perform all the powers and duties of the president or the vice-president as the case may be, for such period as the Collector may from time to time direct."

Insertion of new section 34A in Bom. VI of 1923.

3. In Chapter II, after section 34 of the Bombay Local Boards Act, 1923, the following new section shall be inserted, namely:— Bom. VI of 1923.

Collector to authorise member or chief officer to exercise powers and perform duties of president or vice-president in certain cases.

"34A. If at any time it appears to the Collector that a situation has arisen whereby the president or the vice-president as the case may be is for any reason not likely to exercise and perform any of the powers and duties conferred and imposed on him or deputed to him by or under this Act then notwithstanding anything contained in this Act or in the rules or regulations made thereunder the Collector may by order in writing authorise any member of the local board, other than the president or the vice-president as the case may be or the chief officer to exercise and perform all the powers and duties of the president or the vice president as the case may be, for such period as the Collector may from time to time direct."

Insertion of new heading and section 32A in Bom. XVIII of 1925.

4. After section 32 of the Bombay Municipal Boroughs Act, 1925, the following new heading and section shall be inserted, namely:— Bom. XVIII of 1925.

"*(6A) Special provisions for exercise of powers and performance of duties of president and vice-president in certain contingencies.*

Collector to authorise councillor or chief officer to exercise powers and perform duties of president or vice-president in certain cases.

32A. If at any time it appears to the Collector that a situation has arisen whereby the president or the vice-president as the case may be is for any reason not likely to exercise and perform any of the powers and duties conferred and imposed on him or deputed to him by or under this Act, then notwithstanding anything contained in this Act or in the rules or regulations made thereunder, the Collector may by order in writing authorise any councillor, other than the president or the vice-president as the case may be, or the chief officer to exercise and perform all the powers and duties of the president or the vice-president as the case may be, for such period as the Collector may from time to time direct."

35 79
77

STATEMENT

Practical difficulties have been experienced in the case of certain local bodies whose presidents or vice-presidents have been detained in prison under the Defence of India Rules. They continue to be presidents or vice-presidents in spite of the detention but cannot effectively discharge the duties imposed upon them by or under the statute. Cases have occurred where presidents have been found unwilling to take leave of absence from the local bodies concerned or to authorise the vice-presidents to carry out their duties. In order to remove the deadlock which has thus been created or may be created in future, it is necessary to amend the Bombay District Municipal Act, the Bombay Local Boards Act and the Bombay Municipal Boroughs Act so as to empower the Collector in such contingencies to authorise such member of the local body as he may deem fit or the Chief Officer to perform all the functions of the president and vice-president, as the case may be.

The Act will remain in force for six months but is extensible by further periods of six months at a time but in no case beyond 1st April 1944.

AF Bk H 998—2

BOMBAY: PRINTED AT THE GOVERNMENT CENTRAL PRESS.